163-696

TRANSCRIPT OF RECORD.

163-696

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 297.

THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE FARWELL FARMERS' WAREHOUSE ASSOCIATION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED DECEMBER 1, 1893.

(15,455.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 3, 1895.

1 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1893.

Before the railroad and warehouse commission of the State of Minnesota.

THE FARWELL FARMERS' WAREHOUSE ASSOCIATION, Complainant,
vs.
THE MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, Defendant.

To the railroad and warehouse commission of the State of Minnesota:

The above-named complainant, The Farwell Farmers' Warehouse Association, respectfully shows to the honorable commission and alleges:

2 First. That at all times hereinafter mentioned, the above-named complainant was and still is a corporation duly organized under the laws of the State of Minnesota for the purpose of building and operating a grain warehouse for receiving, buying, storing and shipping wheat and other grain.

Second. That the principal place of business of said association is the village of Farwell, situated in the county of Pope, in said State.

Third. That at all times hereinafter mentioned, the defendant, The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, was and is a corporation duly created under the laws of the State of Minnesota. That as such corporation it has been at all said times and still is engaged in operating, as the owner thereof, a line of railroad in said State, between said village of Farwell, in Pope county, and the city of Minneapolis, in said State of Minnesota, and during all said time said line of railroad so operated has been and still is the only line of railroad running through or near said village of Farwell. That during all said time said defendant was and still is the owner of a right of way at said station of Farwell, upon which it has constructed side tracks and erected a station-house and allowed the erection of grain warehouses or elevators adjacent to its side tracks.

Fourth. That to the successful pursuit of its business it became, was and is, necessary that said association should have, own and control a warehouse in which to buy, clean and store, and from which to ship such wheat and other grain as it might handle or deal in; and that it was and is also necessary to the profitable management of such business that such warehouse should be located on a side track connected with such line of railroad at or near said station, to the end that such grain as the association might purchase or ob-

3 tain for shipment by rail from such warehouse might be loaded directly into cars standing on such side track, without the expense, trouble and delay of handling such grain by wagon from said warehouse to cars standing upon the track to be loaded

therefrom; that in case said warehouse did not so stand with relation to such line, so hauling such grain by wagon or other means, in order to load same into cars, would be necessary to the transaction of the business of the complainant and would thereby involve it in great loss and expense.

That during the times hereinafter mentioned, there were and now are at said station two other grain warehouses, each of which was and is situated on the defendant's right of way and adjacent to its side track thereat; and that during said times there was, and now is, another railroad station along said line of road known as Kensington, and which is the next station on rail line in a westerly direction from Farwell, and situated five miles therefrom; and that there is, and during all such time has been, another station on such line called Lowry, and situated six miles in an easterly direction from Farwell, and the next station thereto in that direction; that in the meantime the defendant has kept and maintained a side track at each of the two last-named stations, as well as at Farwell station, for the accommodation of the business at such stations respectively.

That during all such times there were two or more grain-houses situated, kept and maintained at each of said three stations, each and every one of which grain-houses was, during such time, used in and for the purchasing, storing and handling of grain by parties and persons other than the defendant, and since the erection of the defendant's grain-house and the opening thereof for business, in competition with the defendant; that many of the farms and grain fields in the neighborhood of Farwell station are so located
4 with reference to said three stations that the grain grown thereon can be hauled to and marketed at either said Kensington station or Lowry station at no greater expense, labor and trouble than is involved in hauling the same to and marketing it at Farwell station; that when a higher price is paid therefor by the grain-houses at either Kensington station or Lowry station than at Farwell station, such grain, or a large proportion thereof, is marketed at one of said two stations and not at Farwell station; that such houses were, by the consent of and permission from the defendant, severally located upon its right of way and adjacent to the side tracks connected with the main line of its road at each of said stations respectively; that by reason of said business being so located, the parties severally managing or operating them were, during all the time herein mentioned, and now are, enabled to load wheat and other grain, shipped by rail from them, directly into cars standing upon the side tracks at said stations by means of spouts or conveyors, and without the necessity of hauling the same by team or other means from such grain-houses to the cars into which the same is loaded, and free from the expense and trouble incident to such hauling.

Fifth. The complainant, further informing the commission, alleges that on the 22nd day of October, 1889, the said Farwell Farmers' Association duly organized under its articles of incorporation by the election of its officers and commencing the business for which it was

incorporated; and being then prepared and ready to erect a warehouse for the transaction and accommodation of its business, did on the 26th day of said month, make application in writing to the defendant for a site or location on which to erect the same on the defendant's right of way at said Farwell station, and alongside of defendant's side track thereat, where such house so to be erected should have the use and accommodation of such side track in the
5 transaction of its business, and the shipping of the grain handled by it; that said defendant wholly neglected and refused to comply with the said request or application of the complainant, and positively refused to allow it to erect said warehouse upon the defendant's right of way upon any terms or conditions whatever, and positively refused to entertain any proposition involving the permission to complainant to erect said warehouse upon said right of way.

Sixth. The complainant further avers that upon such refusal said association purchased and obtained a site and location for its intended grain-house at said station of Farwell and adjacent to the defendant's right of way thereat, and as near as possible to its station buildings and side tracks thereat, and did then and there proceed to erect, and did build and furnish with the necessary equipment for the storage, handling and shipping of wheat and other grain, a warehouse which was completed and ready for the transaction of such business in the autumn of 1889, and which has been occupied and used therefor by it ever since such completion; that said warehouse was, when erected, and now is, situated about three hundred feet from the side track at said station, and that the defendant's cars furnished for the loading of grain from said warehouse cannot be set or stationed on side track nearer than three hundred feet from said house, over and along which distance it is necessary to haul the grain by wagon, which is taken from said house to be shipped over defendant's said road in either direction from said station.

That the expense of so hauling the grain shipped by the complainant from said house, over and above the cost of loading the same directly into cars through and by means of spouts or conveyors, as can be and is done by and from all the other grain-
6 houses mentioned herein, is considerable, and is burdensome to the complainant's business and puts it to great disadvantage in its attempt to carry on said business in opposition to or competition with the managers or proprietors of such other houses; that by means thereof such managers or proprietors can, when the margin of profit in handling grain is small, as is often the fact, make a profit in business, while the complainant must either cease to do business or run at a loss; that on the 4th day of February, 1890, and again on the 25th day of September, of the same year, the complainant made demand in writing upon the defendant that it should construct or furnish a side track at said Farwell station, which should connect by rail the said warehouse with defendant's main line or track thereat; and which, the complainant further avers, the defendant could do without building such side track, or any part thereof, off its right of way; but, notwithstanding such demand

and the long time that has since elapsed, the defendant wholly failed and neglected to comply with such demand, and still does so neglect and refuse.

Seventh. The complainant further alleges and informs the commission that one of the warehouses hereinbefore described as having been erected and operated at said Kensington station, was erected and operated before the making of the complainant's said application to the defendant for leave and permission to build and operate the complainant's said warehouse upon defendant's right of way at said Farwell station; that said Kensington warehouse was, upon the application of its owners or operators to the defendant, and, by the defendant's express permission and consent, erected upon its right of way thereat; and that it was so located and built and has ever since been operated without the payment of any ground or other rent in consideration thereof, or any promise or agree-
7 ment to make such payment, and without any promise or consideration being made or given by the owners or managers of such warehouse, for or in consideration of the privilege of occupying the site of such warehouse on said right of way, or of doing business thereat. That during the time hereinbefore mentioned the defendant railway has been, and now is, the only railway at the said Farwell station or within several miles thereof, and that no grain or other freight can be shipped therefrom by rail except over said railroad.

Wherefore the complainant, The Farwell Farmers' Warehouse Association, prays that the said Minneapolis, St. Paul & Sault Ste. Marie Railway Company be required by this honorable commission to forthwith fully construct and make ready for the running of cars thereon, a side or spur track from its existing main or side track at said station of Farwell to the said warehouse, to the end that the complainant may be able to load grain from its said warehouse directly into the cars upon said side or spur track by means of spouts, and that said side or spur track be so constructed that it can be operated in connection with said warehouse of complainant without any unnecessary trouble or expense, or show cause why said defendant has not done so, and that said defendant then and there make answer hereto according to law and the rules and practice of said commission.

FARWELL FARMERS' WAREHOUSE ASSOCIATION,
By ANDREW B. LEE, *President*,
H. M. S. IRGENS, *Secretary*,
Complainant.

STATE OF MINNESOTA, } ss:
County of Pope, }

H. M. S. Irgens, being first duly sworn, deposes and says that he is the secretary of The Farewell Farmers' Warehouse Association, the complainant in the foregoing application, and knows the
8 contents thereof, and that the same is true to the best of his knowledge, information and belief.

H. M. S. IRGENS.

Subscribed and sworn to before me this 9th day of February, 1892.

CHAS. HANSON,
Justice of the Peace, Pope County, Minn.

(Title of Cause.)

To the honorable the railroad and warehouse commission of the State of Minnesota:

The defendants above-named, answering the complaint of the Farwell Farmers' Warehouse Association, first admits the incorporation of the parties above-named for the purposes stated in said complaint.

Further answering said complaint, the defendant alleges that the grain-house which the complainant claims to have built, and of which it alleges it is the owner, was constructed and now stands upon a public highway of the town of Farwell, distant about 350 feet from the nearest switch and side track of the defendant, which forms the southern boundary of said highway; that the complainant is not the owner of the land upon which said building is constructed, and had no authority or right to construct said building upon said highway.

The defendant furthers alleges that the building of a side track or spur, from the defendant's main track to said building, or past the same, would require the laying of about four hundred feet of track, owing to the situation of said building and the nature of the ground lying between said building and the defendant's main track,
9 and the distance to said building from the side track already constructed; that to reach said building from the main track from any point on either side thereof would require a very heavy fill for a considerable distance, to wit, a fill of from six to twelve feet; that to construct a side track to said building under the conditions and circumstances referred to, all material for said fill would have to be brought from a distance at great expense; that without having made any accurate estimate, the defendant alleges, on information and belief, that the construction of a practicable side track to the said building would require an outlay of at least $1,000.00, and, owing to the fill aforesaid and the length of track, would require a considerable outlay each year to keep the same in repair.

The defendant further alleges that the complainant could not have selected a more impracticable point for the construction of its building, with reference to the construction of a side track, which is demanded in said complaint at or in the vicinity of said station.

The defendant further alleges that the business which the complainant has furnished, or is likely to furnish, to the defendant would not justify the construction of the side track demanded; that even if the defendant were under any obligation or legal requirement to construct a side track to the building owned by the complainant, wherever situated, which the defendant denies, that to require the building of such side track, in view of the premises,

would be unreasonable and ought not to be required by this honorable commission.

Wherefore the defendant demands that the said complaint be dismissed.

ALFRED H. BRIGHT,
Defendant's Attorney.

10 STATE OF MINNESOTA, } ss:
Hennepin County, }

W. L. Martin, being first duly sworn, deposes and says that he is the secretary of The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, the above-named defendant; that he knows the contents of the foregoing answer, and that the same is true to the best of his knowledge and belief.

W. L. MARTIN.

Subscribed and sworn to before me this 29th day of February, 1892.

[NOTARIAL SEAL.] J. H. BRADISH,
Notary Public, Hennepin County, Minn.

(Title of Cause.)

The complaint in the above-entitled action was filed with the commission on the 11th day of February, 1892.

On February 12th, 1892, the complaint was served upon the defendant by copy thereof being left with the assistant general manager of said railway company, together with notice that the company must either satisfy the complaint or answer the same in writing within twenty days from said February 12th, 1892.

On March 1st, 1892, the defendant answered by its attorney, Mr. Alfred H. Bright, and served copy of such answer on complainant's attorney, Hon. H. Austin, and also filed copy of such answer with the commission on March 2nd. On March 22nd, 1892, notice was made and served upon defendant's attorneys fixing a hearing in the above-entiled action for April 1st, 1892, at the office of the commission. On April 1st, 1892, a hearing was had before the
11 commission, pursuant to notice, at which hearing the defendant appeared by its attorney, Mr. Alfred H. Bright, and complainant appeared by its attorney, Hon. H. Austin. On the hearing, and before any witnesses were sworn, Mr. Bright, defendant's attorney, made the following motion: "Comes the defendant and moves to dismiss the petition herein on the ground that the facts therein stated are insufficient," which motion was overruled by the comission; whereupon Mr. Ole Irgens, of Farwell, former secretary of the association, complainant herein, was sworn, and his testimony taken on behalf of complainant; Mr. Thomas Green, assistant to the chief engineer of said defendant company, was sworn, and his testimony taken on behalf of said defendant.

Complainant's attorney introduced in evidence copy of the decree of the judge of the seventh judicial district of Minnesota, vacating

the streets and alleys upon which the grain warehouse of the association is located; also warranty deed to said property to the complainant. Both complainant and defendant filed plats of the village of Farwell, showing the location of railroad tracks, depot building, elevator and grain houses on the right of way as well as the location of the complainant's grain-house.

Findings of Fact.

From the pleadings, the testimony introduced and the documentary evidence filed at the hearing, the commission finds the following facts:

First. Both complainant and defendant are corporations duly organized and existing under the laws of the State of Minnesota, and have been such for more than a year last past. That the business of the complainant is the operating of a grain warehouse at Farwell, Pope county, Minnesota, on defendant's line of rail-
12 way, for receiving, buying, storing and shipping wheat and other grain. That the defendant is a common carrier, and is engaged in operating as the owner thereof a line of railway in this State between the village of Farwell, in Pope county, and the city of Minneapolis, Minnesota, and has been during all the time hereinafter mentioned the only line running through or near said village of Farwell; that during all of said time the defendant was and still is the owner of a right of way at said station of Farwell, upon which it has constructed side tracks and erected a station-house and allowed the erection of grain-houses and elevators adjacent to its said side tracks, on said right of way.

Second. That on the 22nd day of October, A. D. 1889, the said complainant duly organized under its articles of incorporation, by the election of its officers, and commenced the business for which it was incorporated; and being then prepared and ready for the transaction of its business did, on the 26th of said month, make application in writing to the defendant for a site or location on which to erect a grain warehouse, in which to transact its said business, on defendant's right of way at said Farwell station, and alongside of defendant's side track thereat. That said defendant unconditionally refused said application and wholly neglected to comply with the same. That upon such refusal upon the part of the defendant, the complainant purchased and obtained a site and location for a grain-house at said Farwell station, and adjacent to defendant's right of way, as near as practicable to the station building and side track of the defendant, and did then and there construct a grain-house and furnish the same with necessary equipment for storage, handling and shipment of wheat and other grain. That this grain-house was completed and ready for the transaction of such business in the autumn of 1889, and has been occupied by the complainant
13 in the buying, handling and shipping of wheat and other grain ever since its completion.

That said grain-house is fifty-five (55) feet from the main track of defendant's line of railway, and on land owned by the complainant.

That on the 4th day of February and on the 25th day of September, 1890, the complainant demanded of the defendant, in writing, that defendant should construct or furnish a side track or spur track, at said Farwell station, which should connect by rail the said grain-house with the defendant's main line or side track; that defendant could then have so constructed and can now so construct such side or spur track as that no part of the same would be off from its right of way.

That the defendant has at all times refused and neglected to comply with such demand.

Third. That the defendant corporation had not only allowed other persons or associations to erect and maintain elevators and grain-houses on its said right of way and in connection with its side tracks at said Farwell station, previous to the making of the complainant's said application, but had also theretofore permitted other persons and associations to construct and erect grain warehouses and elevators at the station on said road next to the east, and at a station thereon next to the west of said Farwell station, and not more than six miles therefrom in either direction; that such warehouses and elevators were built and erected at the said stations, pursuant to such permission and consent of the defendant, before the making of the complainant's said application, and have, since the erection of the complainant's said house, been operated and conducted in competition therewith; and the same is also true of the two grain-houses erected on the right of way at said Farwell station, as shown in the evidence.

That at least one of said grain warehouses, namely one of
14 those so built and erected at the next station to the west of Farwell (at Kensington station) was then and there erected, and has ever since been run and operated, without the payment of any rent to the defendant and without the exacting of any terms or stipulations by the defendant from or of the owners or operators of such warehouses, as a condition of, or in consideration for, the erection or maintenance of such house upon said right of way, or in connection with the defendant's side tracks at said station.

Upon what terms or conditions, if any, the defendant permitted the other grain-houses or elevators, hereinbefore mentioned, to be erected or operated does not appear from the pleadings or the evidence.

Fourth. We find from the evidence that by reason of the defendant's refusal to permit the erection and maintenance of the grain-house of the complainant upon the right of way of the company and in connection with the side track at said Farwell station, the complainant has been compelled to transfer the grain by it offered to the defendant company for transportation from its grain-house to the cars of said defendant company by wagon; and that the cost of said transfer from the date of the erection of said warehouse to the present time has been the full sum of six hundred and ten dollars and seventy-five cents.

Fifth. From the testimony of defendant's witness, Mr. Green, it appeared that the cost of the construction of a spur track from the

defendant's main line of track at said station to said grain warehouse would be the sum of eight hundred dollars.

Conclusions.

From the evidence, oral and documentary, taken and received upon the above-mentioned investigation, as well as from the facts above found, it satisfactorily appears to the commission, and as conclusions of law we find, first, that the defendant corporation in refusing the complainant a site for its grain house on defendant's right of way, when the same was demanded by it, while admitting other persons and associations engaged in the prosecution of the same class of business, to erect and maintain grain warehouses or elevators on said right of way, as well as in affording them free side track accommodations in connection with such grain houses and elevators, while such privileges *was* by the defendant denied to the complainant, was and is guilty of unjust and illegal discrimination toward and against said association. Second, that the defendant by refusing and neglecting to construct a side track from its tracks at Farwell station to the complainant's warehouse, whereby to afford it connection by rail with the defendant's main line, and the same or equal shipping facilities *with* the defendant afforded the other grain houses and elevators doing business in competition with the complainants, did violate the laws of the State of Minnesota in that regard, and has ever since continued to deprive the complainant of its legal rights in respect to which it complains.

Now, therefore, it is ordered and determined that the defendant corporation should, within ninety days from and after the date of the service of this notice upon it, build and construct a side track to the complainant's said warehouse so as to connect the same by rail with its main line at or near Farwell station, and to so construct and maintain such side track as to afford the complainants the same or equal shipping facilities as are afforded such other grain houses or elevators as are mentioned in the above findings of fact, and the defendant corporation are hereby notified and directed so to do.

If by an arrangement or understanding between the parties a spur track instead of a side track should be built to the complainant's warehouse, the same shall be taken and considered as a compliance with this order, so far as the building and construction of track is concerned.

By order of the commission.

Dated at St. Paul, Minn., this sixth day of April, A. D. 1892.

A. K. TEISBERG, *Secretary.*

Copy of above served on General Mgr. F. D. Underwood at his office on April 6th, 1892.

A. K. TEISBERG, *Sec'y.*

(Title of Cause.)

Notice of Appeal.

Please take notice that the above-named defendant hereby appeals to the district court of Hennepin county, from the order of the commission in the above-entitled matter.

ALFRED H. BRIGHT,
Attorney for Defendant.

To the honorable railroad and warehouse commission of the State of Minnesota and Honorable Horace Austin, attorney for complainant.

Dated, Minneapolis, April 21, 1892.

17 STATE OF MINNESOTA, }
County of Hennepin. }

District Court, Fourth Judicial District.

THE FARWELL FARMERS' WAREHOUSE ASSOCIATION
vs.
THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY.

Decision.

The above-entitled cause being brought here by appeal of the defendant, from an order made by the railroad and warehouse commission of the State of Minnesota, on the sixth day of April, 1892, and being regularly upon the calendar for the September, 1892, general term of this court, came on for trial in its order on Monday, the twenty-fourth day of October, 1892, in said term, and plaintiff appeared by Mr. Austin, its attorney, and the *the* defendant by Mr. Bright, its attorney; and the cause was submitted upon the report of said commission without other evidence.

After hearing counsel, and duly considering the matter, I find the facts as stated in the findings of facts contained in said report are true as therein set forth, and as conclusions of law endorse the conclusions of said commission set forth in the same report.

The plaintiff is entitled to judgment affirming the order made by said commission and set forth in said report.

Let judgment be entered accordingly.

WILLIAM LOCHREN, *Judge.*

October 24, 1892.

18 *Judgment.*

Thereafter, to wit, on the 25th day of January, 1893, judgment in said cause was entered in accordance with the findings of fact and conclusions of law above set forth, and by which said judgment, it was ordered that the said defendant should, within ninety days after the entering thereof, build, erect and construct a side track to the

plaintiff's said warehouse, so as to connect the same by rail with its main line at or near Farwell station, and to so construct, build and maintain such side track as to afford the plaintiff the same or equal shipping facilities as the defendant affords, gives or renders such other grain-houses or elevators, or any one of them, as are mentioned in the above findings of fact; that the plaintiff do have and recover its costs and disbursements hereby taxed at $17.58.

(Title of Cause.)

Notice of Appeal.

To Hon. Horace Austin, attorney for the above-named plaintiff, and to C. N. Dickey, Esq., clerk of said district court:

You will please take notice, that the above-named defendant hereby appeals to the supreme court of the State of Minnesota from the judgment of said district court, entered herein on the 25th day of January, A. D. 1893, and from the whole thereof.

Dated this 27th day of January, A. D. 1893.

ALFRED H. BRIGHT,
Attorney for Defendant.

(Bond on appeal duly filed and served.)

19 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1893.

TUESDAY MORNING, 9.30 o'CLOCK, *June 13th, A. D.* 1893.

Court convened pursuant to adjournment, all the justices being present.

THE FARWELL FARMERS' WAREHOUSE ASSOCIATION, Respondents, *vs.* THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY, Appellant. } Cal. No., 190. Reg. No., 8203.

This cause come on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision, and taken under advisement.

A true record.

Attest: C. P. HOLCOMB, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: C. P. HOLCOMB, *Clerk.*

20 [Endorsed:] 8203. State of Minnesota, supreme court. The Farwell Farmers' Warehouse Association, respondents, *vs.* The Minneapolis, St. Paul and Sault Ste. Marie Railway Co'y, appellants. Copy of minutes of argument. Filed October 3rd, A. D. 1893. C. P. Holcomb, clerk.

21 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1893.

THE FARWELL FARMERS' WAREHOUSE ASSOCIATION, Respondent,
vs.
THE MINNEAPOLIS, ST. PAUL AND Sault Ste. Marie Railway Company, Appellant.

No. 190. Appeal from District Court, Fourth Judicial District, County of Hennepin.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1893, upon the return to the appeal herein: now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below herein appeal- from be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered October 3rd, A. D. 1893.

By the court.

Attest: C. P. HOLCOMB, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: C. P. HOLCOMB, *Clerk.*

22 [Endorsed:] No. 8203. State of Minnesota, supreme court. Copy of order for judgment. Filed October 3rd, A. D. 1893. C. P. Holcomb, clerk. Entered on page 367, "I."

23 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1893.

THE FARWELL FARMERS' WAREHOUSE ASSOCIATION, Respondent,
vs.
THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY, Appellant.

No. 190.

Pursuant to an order of court duly made and entered in this cause on the third day of October, A. D. 1893, it is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the fourth judicial district, sitting within and for the county of Hennepin, be, and the same hereby is, in all things affirmed; and it is further determined and adjudged that the respondent above named do have and recover of said Minneapolis, St. Paul and Sault Ste. Marie Railway Company, appellant herein, the sum and amount of forty-five dollars ($45.00) costs and disbursements in this cause in this court, and that said — have execution for the enforcement thereof.

Dated and signed this 3rd day of October, 1893.

By the court.

Attest: C. P. HOLCOMB, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25 00
Clerk's fees for making return	
Printer's fees	10 00
Clerk's fees, supreme court	9 50
Filing mandate and docketing transcript	
Affidavits and acknowledgments	50
Postage	
Copying return for printer	
	$45 00

24 [Endorsed:] State of Minnesota, supreme court. Farwell Farmers' Warehouse Association, respondent, *vs.* Minneapolis, St. Paul & Sault Ste. Marie R'y Co'y, appellants. Transcript of judgment. Filed October 3rd, A. D. 1893. C. P. Holcomb, clerk. —— ——, attorney for —— ——. Page No. 259, "R" Book.

STATE OF MINNESOTA, *Supreme Court,* } *ss:*

I, C. P. Holcomb, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this third day of October, A. D. 1893.

C. P. HOLCOMB, *Clerk.*

25 [Endorsed:] No. 8203. State of Minnesota, supreme court. Farwell Farmers' Warehouse Association, respondent, against The Minneapolis, St. Paul & S. Ste. Marie R'y Co'y, appellant. Judgment-roll. Filed October 3rd, 1893. C. P. Holcomb, clerk.

26 8203.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1893.

FARWELL FARMERS' WAREHOUSE ASSOCIATION, Respondent, *vs.* MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, Appellant. } No. 190. Syllabus.

By chapter 10, sec. 2, subdiv. *b*, Laws 1887, a railway company is obliged to give equal or substantially similar facilities for the transportation of grain to all persons who in good faith erect or desire to

erect warehouses at any of its stations, and if a demand therefor is unreasonably refused the State railway and warehouse commission may, after due investigation, proceed to enforce the performance of such duty.

A railway company may impose reasonable terms and conditions upon persons who demand such facilities, but they must be the same for all.

27 8203.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1893.

FARWELL FARMERS' WAREHOUSE ASSOCIATION, Respondent, *vs.* MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, Appellant. } No. 190. Opinion.

The plaintiff, having erected a warehouse adjacent to the right of way of the defendant in the village of Farwell, Pope county, demanded of the defendant company that it construct a side track to the same on its right of way, to enable it to ship grain received and stored therein, and upon the refusal of its request complaint was made to the railroad and warehouse commission of the State. An investigation was had thereon by the commission in pursuance of the statute, and its findings of fact and conclusions of law made and filed granting the petition. These findings and conclusions were adopted and affirmed by the district court on appeal, and upon the same record the appeal from the judgment of that court is to be determined here.

The gist of the complaint is that the defendant has refused to grant to the plaintiff the same privileges or equal facilities for the shipment of grain which they have conceded to other warehousemen at the same station and has unlawfully discriminated against the plaintiff in that respect.

28 The findings material to the consideration of the case are as follows: "That on the 22nd day of October, A. D. 1889, the said complainant duly organized under its articles of incorporation by the election of its officers, and commenced the business for which it was incorporated; and, being then prepared and ready for the transaction of its business, did, on the 26th of said month, make application in writing to the defendant for a site or location on which to erect a grain warehouse in which to transact its said business, on defendant's right of way at said Farwell station and alongside of defendant's track thereat; that said defendant unconditionally refused said application and wholly neglected to comply with the same; that upon such refusal upon the part of the defendant the complainant purchased and obtained a site and location for a grain-house at said Farwell station and adjacent to defendant's right of way, as near as practicable to the station building

and side track of the defendant, and did then and there constuct a grain-house and furnish the same with necessary equipment for storage, handling, and shipment of wheat and other grain; that this grain-house was completed and ready for the transaction of such business in the autumn of 1889, and has been occupied by the complainant in the buying, handling, and shipping of wheat and other grain ever since its completion.

That said grain-house is fifty-five (55) feet from the main track of defendant's line of railway and on land owned by the complainant.

That on the 4th day of February and on the 25th day of September, 1890, the complainant demanded of the defendant, in
29 writing, that defendant should construct or furnish a side track or spur track at said Farwell station, which should connect by rail the said grain-house with the defendant's main line or side track; that defendant could then have so constructed and can now so construct such side or spur track as that no part of the same would be off its right of way.

That the defendant has at all times refused and neglected to comply with such demand.

That the defendant corporation had not only allowed other persons or associations to erect and maintain elevators and grain-houses on its said right of way and in connection with its side tracks at said Farwell station previous to the making of the complainant's said application, but had also theretofore permitted other persons and associations to construct and erect grain warehouses and elevators at the station on said road next to the east and at a station thereon next to the west of said Farwell station and not more than six miles therefrom in either direction; that such warehouses and elevators were built and erected at the said stations, pursuant to such permission and consent of the defendant, before the making of the complainant's said application, and have since the erection of the complainant's said house been operated and conducted in competition therewith, and the same is also true of the two grain-houses erected on the right of way at said Farwell station, as shown in the evidence."

"We find from the evidence that by reason of the defendant's refusal to permit the erection and maintenance of the grain-
30 house of the complainant upon the right of way of the company and in connection with the side track at said Farwell station the complainant has been compelled to transfer the grain by it offered to the defendant company for transportation from its grain-house to its cars by wagon, and that the cost of said transfer from the date of the erection of said warehouse to the present time has been the sum of six hundred ten and $\frac{1}{100}$ dollars."

Railroad corporations are quasi-public corporations and enjoy privileges and franchises granted by the State in consideration of the general benefits which the public may be expected to derive from the operations of the roads.

They must therefore — subject to certain necessary and proper limitations which the law will recognize; be operated so as to reason-

ably accommodate the business and subserve the best interests of the public.

One of the most important of these interests in an agricultural community is the marketing and transportation of grain, and the price may in any particular case be effected to a greater or less extent by the facilities for transportation afforded and the opportunity for competition by purchasers.

It is undoubtedly a subject proper for legislative cognizance. It is an essential condition to the right of eminent domain by a railroad corporation that all the people should have the right to use the road on equal terms, and it is the policy of the law not to permit such corporations to grant special privileges to any persons which are denied to others under like conditions. This is
31 declared by the act of 1887, regulating common carriers and prescribing the duties of the railroad commissioners. Ch. 10, Laws 1887, sec. 2, sub. *b*.

In our judgment, the following legal conclusion based upon the facts found in the case was warranted thereby and authorized the judgment appealed from: "That the defendant corporation, in refusing the complainant a site for its grain-house on defendant's right of way when the same was demanded by it, while admitting other persons and associations engaged in the prosecution of the same class of business to erect and maintain grain warehouses or elevators on said right of way, as well as in affording them free sidetrack accommodations in connections with such grain-houses and elevators, while such privileges were by the defendant denied to the complainant, was and is guilty of unjust and illegal discrimination toward and against said association."

There is no doubt of the good faith of the plaintiffs, and the amount of business transacted by them under unfavorable circumstances show that there is a public demand for the maintenance of their warehouse. They are entitled to be placed on an equal footing with other dealers and warehousemen at the same station. The discrimination against them appears to be unreasonable and they were entitled to the relief adjudged in their favor.

It is not claimed by the respondent's counsel that the plaintiffs had an absolute right to occupy the defendant's right of way or to demand a site for a warehouse thereon. The railway company was not obliged to grant such concessions on its right of way.
32 All that is contended for in that regard and all that was necessarily decided in the case is that if it granted these privileges to others it cannot refuse the same or substantially similar ones to the plaintiff, and it cannot complain after having refused a site on its right of way similar to that granted to others that the plaintiff should accept a site adjacent thereto and demand a side track for its accommodation, which the court finds to be a reasonable and proper concession under the circumstances, in order to afford substantially similar facilities to the plaintiff for handling grain to those granted to others at the same station. Undoubtedly the railway company may impose reasonable conditions and terms upon persons who demand trackage for warehouses for the trans-

portation for grain, but they must be the same for all, and the refusal of the company to furnish such trackage at any particular station and within its right of way so as to allow competition in the handling and transportation of grain is a proper subject of investigation by the railway and warehouse commission under the act referred to.

It is not deemed necessary to consider other questions raised by counsel in the case, especially in view of recent legislation.

Judgment affirmed.

VANDERBURGH, *J.*

33 STATE OF MINNESOTA, *Supreme Court,* } ss:

I, C. P. Holcomb, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the opinion and syllabus in the cause therein entitled, as appears from the original, remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of said supreme court, at the capitol, in the city of St. Paul, this twelfth day of September, A. D. 1893.

[Seal of the Supreme Court, State of Minnesota.]

C. P. HOLCOMB, *Clerk.*

34 [Endorsed:] No. 8203. State of Minnesota, supreme court. Farwell Farmers' Warehouse Association, respondent, *vs.* Minneapolis, St. Paul & Sault Ste. Marie Railway Company, appellant. Opinion and syllabus. Filed September 8th, 1893. C. P. Holcomb, clerk. April term, A. D. 1893. Vanderburgh, J.

35 To the Honorable James Gilfillan, chief justice of the supreme court of the State of Minnesota:

Now comes the Minneapolis, St. Paul and Sault Ste. Marie Railway Company, by its attorney, Alfred H. Bright, and complains that in the records and proceedings, and also in the rendition of the judgment in a suit between The Farwell Farmers' Warehouse Association, plaintiff, and the said Minneapolis, St. Paul and Sault Ste. Marie Railway Company, defendant, in the supreme court of Minnesota, being the highest court of law or equity of the said State of Minnesota in which a decision could be had in such suit, and in which a final judgment was rendered against it on the 3d day of October, A. D. 1893, in said suit, wherein it was adjudged that so much of chapter 10, General Laws of Minnesota for 1887, as was held to impose a duty upon said railway company to build a side track or spur track to the warehouse of the plaintiff, and for the sole benefit of the plaintiff, without compensation, did not impair the obligations of the charter of said railway company, contrary to the clause of section 10, article 1, of the Constitution of the United States, which prohibits any State from passing any law impairing the obligation of contracts; also, that it did not deprive said railway company of

its property without due process of law, contrary to the 14th amendment to the Constitution of the United States, nor deny to the said railway company equal protection of the laws, contrary to the said 14th amendment.

It was also adjudged by said supreme court, by its final judgment in said suit, that so much of said chapter of the Laws
36 of 1887 as was held to impose upon the said railway company the duty of building and maintaining, at its own sole cost and expense, the said side or spur track to the warehouse of the said plaintiff, not as a facility for the accommodation of the general public, but for the sole and exclusive use of the said plaintiff in its business, did not exceed the police power of said State, and was not in contravention of said provisions of the Constitution of the United States, all of which appears in the records and proceedings of said suit, whereby manifest error has happened, to the great damage of the said railway company.

Wherefore the said railway company prays for the allowance of a writ of error, and for such other process as may cause the same to be corrected by the Supreme Court of the United States.

ALFRED H. BRIGHT,
Attorney for the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Minneapolis, Minn.

Allowed.
JAMES GILFILLAN,
Chief Justice, Supreme Court, Minnesota.

37 [Endorsed:] State of Minnesota, supreme court. The Farwell Farmers' Warehouse Association *vs.* The Minneapolis, St. Paul and Sault Ste. Marie Railway Company. Petition for writ of error. Due service of within petition by copy admitted this 24 day of October. H. W. Childs, att'y for def't in error. Filed Nov. 9, 1893. C. P. Holcomb, clerk.

38 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because that in the records and proceedings and also in the rendition of the judgment of a plea which is in the supreme court of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Farwell Farmers' Warehouse Association and The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, wherein was drawn in question the validity of a statute of the said State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such validity, a manifest error hath happened, to the great damage of the Minneapolis, St. Paul and Sault Ste. Marie Railway Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to

the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all thing- concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to
39 be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of October, A. D. 1893.

[U. S. Circuit Court Seal, Dist. of Minnesota, Third Division.]

OSCAR B. HILLIS,
Clerk of the Circuit Court of the United States
for the District of Minnesota,
By LOUISE B. TROTT, *Deputy.*

40 [Endorsed:] Minneapolis, St. Paul & Sault St. Marie R'y Co. *vs.* Farwell Farmers' Warehouse Association. Writ of error. Filed Nov. 10, 1893. C. P. Holcomb, clerk.

41 UNITED STATES OF AMERICA, *ss:*

To the Farwell Farmers' Warehouse Association, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Minnesota, wherein The Minneapolis, St. Paul and Sault Ste. Marie Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable James Gilfillan, chief justice of the supreme court, State of Minnesota, this 23d day of October, A. D. 1893.

JAMES GILFILLAN,
Chief Justice, Supreme Court of Minnesota.

42 [Endorsed:] Minneapolis, St. Paul & Sault Ste. Marie R'y Co. *vs.* Farwell Farmers' Warehouse Association. Citation. Due service of the within citation and the writ of error therein referred to admitted this 24th day of October, 1893. H. W. Childs, attorney for def't in error. Filed Nov. 10, 1893. C. P. Holcomb, clerk.

Subscribed and sworn to before me on this twenty-first day of October, A. D. 1893.

[Notarial Seal, Hennepin Co., Minn.]

GEO. B. YOUNG,
Notary Public, Hennepin County, Minnesota.

I hereby approve the foregoing bond and sureties this 23d day of October, A. D. 1893.

JAMES GILFILLAN,
Chief Justice, Supreme Court, Minnesota.

48 [Endorsed:] Minneapolis, St. Paul & Sault Ste. Marie R'y Co. *vs.* Farwell Farmers' Warehouse Association. Bond. Due service of within bond by copy admitted this 27 day of October, 1893. H. W. Childs, att'y for def't in error.

49 STATE OF MINNESOTA:

Supreme Court.

I, C. P. Holcomb, clerk of said supreme court, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll, and all proceedings in said cause between The Farwell Farmers' Warehouse Association, plaintiff and respondent, and The Minneapolis, St. Paul & Sault Ste. Marie Railway Company, defendant and appellant, in said supreme court, including the opinion of the said supreme court therein, as appears from the original record and files of said court.

And I do further certify and return that I have annexed to said transcript and included therewith the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with proof of service thereof, and a copy of the petition for the allowance of said writ of error and of the assignment of errors, and of the bond on said writ of error, and that the foregoing constitutes a true, full, and complete return to said writ of error.

Seal of the Supreme Court, State of Minnesota.

In witness whereof I have hereunto set my hand and the seal of said supreme court, at the capitol, at St. Paul, Minnesota, this 11th day of November, A. D. 1893.

C. P. HOLCOMB,
Clerk of the Supreme Court.

Endorsed on cover: Case No. 15,455. Minnesota supreme court. Term No., 297. The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, plaintiff in error, *vs.* The Farwell Farmers' Warehouse Association. Filed December 1st, 1893.